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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221675

DATE: July 7, 1986

MATTER OF: Debra R. Hammond - Relocation Expense Entitlements

DIGEST:

1. An employee, transferred from Pullman, Washington, to Fairbanks, Alaska, was authorized to ship a privately owned vehicle (POV). The agency disallowed the POV claim based on the rationale that the employee and her family used another POV as their approved mode of relocation travel, and thus exhausted their rights under 5 U.S.C. § 5727, which precludes the shipment of more than one POV. On appeal, the claim is allowed. Relocation travel and POV shipment entitlements are separate and distinct statutory rights. The use of a POV as an approved mode of travel, in lieu of other approved modes of travel, is reimbursable on a mileage basis under authority of 5 U.S.C. § 5724, and such use as a mode of personal transportation does not diminish the employee's rights under 5 U.S.C. § 5727 to ship a different POV when travel orders approve such shipment. David J. Dossett, B-217691, July 31, 1985.

2. A transferred employee reclaims amount of disallowed portion of meals and miscellaneous expenses incurred while occupying temporary quarters. The agency denied the claim based on its own internal guidelines which provide that such expenses up to 49 percent of the daily allowable maximum rate of per diem are deemed reasonable, but any amount in excess of that percentage was to be summarily disallowed regardless of unusual circumstances. Further agency consideration of the

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claim is required, since all evaluations of reasonableness must be made based on the facts in each case. While an agency may establish as a guideline that a percentage of such daily maximum is reasonable on a "less than" basis, the use of that guideline to summarily bar reimbursement of any amount in excess of that percentage without permitting the employee to supply evidence of its reasonableness is arbitrary and not consistent with the Federal Travel Regulations and decisions of this Office. The claim may be allowed if evidence of unusual circumstances is presented.

This decision is in response to a request from the Office of the Regional Director, Region X, Department of Health and Human Services. It concerns the entitlement of an employee of the Social Security Administration to be reimbursed certain travel and relocation expenses incident to a permanent change-of-station transfer in 1984. We conclude that the employee is entitled to additional reimbursement for the following reasons.

BACKGROUND

The employee, Mrs. Debra R. Hammond, was transferred from Pullman, Washington, to Fairbanks, Alaska, by travel orders issued July 5, 1984. Those orders authorized travel, transportation and travel per diem for her and her family (husband and 1 dependent child); transportation of their household goods, including temporary storage; shipment of a privately owned vehicle (POV); temporary quarters subsistence expense (TQSE), not to exceed 60 days; real estate transaction expenses and miscellaneous expense reimbursement. It was further provided that Mrs. Hammond and her child would travel by air and her husband would travel to her new duty station by POV.

The agency amended the travel orders on the same date, and approved a change in the mode of travel to permit the employee and her child to accompany the employee's husband by POV. The record shows that the employee shipped one POV

and used another POV as her mode of relocation travel. Following completion of her transfer and submission of her travel vouchers, Mrs. Hammond's TQSE claim as well as the expenses claimed for travel, in combination with the cost of POV shipment, were questioned.

By Voucher Adjustment Notice dated July 2, 1985, Mrs. Hammond's official travel mileage was recalculated and reduced; reimbursement for the POV shipment costs was suspended due to lack of a verifiable receipt; the laundry and dry cleaning charges were suspended due to lack of 2 receipts; and her TQSE claim was reduced.

Following reclaim, Mrs. Hammond's TQSE claim for additional amounts was again denied, and her laundry and dry cleaning expense claim was partially allowed. While the POV shipment claim had initially only been suspended due to lack of a receipt, it was disallowed in its entirety on reclaim. The basis for that disallowance was the assertion that since Mrs. Hammond and her family had used a POV as their mode of relocation travel, such POV use was viewed as having exhausted her statutory entitlement under 5 U.S.C. § 5727 (1982) to transport a POV to an overseas duty station incident to relocation.

Mrs. Hammond has appealed the POV shipment and TQSE determinations. She asserts that her TQSE entitlement was initially incorrectly computed since the family lodging cost was not included in the reimbursement calculation. Additionally, she claims that her POV shipment cost should be allowed since she only shipped one vehicle.

DECISION

Transportation of a POV

We do not agree with the agency determination of nonentitlement as to this item.

The entitlement to ship a POV at government expense and an employee's entitlement to be reimbursed for relocation travel are separate and distinct statutory rights. The law and regulations governing reimbursement for employee relocation expenses are contained in 5 U.S.C. §§ 5724 and

5724a (1982), and Part 2 of Chapter 2, Federal Travel Regulations, FPMR 101-7 (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Among the expenses authorized therein is the cost of personal travel of an employee and his immediate family to the new duty station.

Paragraph 2-2.3 of the FTR provides that the use of a POV in connection with a permanent change-of-station transfer may be authorized, with the authorized use of one or more POV's to be in lieu of other approved modes of personal transportation. We stated in decision Gary E. Pike, B-209727, July 12, 1983, at 5:

"The thrust of these provisions is to permit the employee and the members of his immediate family to travel at government expense from his old to his new duty station by such means as is authorized by the employing agency, with such allowable costs not to exceed the costs of travel by the usually traveled route from old station to new station by the mode of travel authorized."

While none of the above-cited provisions discusses the shipment of a motor vehicle, 5 U.S.C. § 5727 (1982) authorizes employees who are transferred to and from posts of duty outside the continental United States to ship one POV in addition to and independent of the expense of personal travel of the employee and his immediate family. In the present situation, the travel orders issued to Mrs. Hammond specifically authorized the shipment of a POV. Additionally, they provided that while she and her child would use commercial air transportation, her husband would use a POV as his mode of travel. Those orders went on to state as a limitation on the expense reimbursement associated with these two entitlements:

"* * * Total cost not to exceed that of mileage for one POV from Lewiston to Seattle, cost of GBL shipment of auto from Seattle to Fairbanks, airfare for employee & dependents from Seattle to Fairbanks & per diem for employee & dependents for travel time from Lewiston to Fairbanks as if traveled as above." (Underscoring supplied.)

As noted, the travel orders were amended to authorize a change in the employee's and dependent child's mode of travel, to wit: "they will now travel via POV with spouse." The above statement regarding the limitation on travel cost reimbursement was restated. In addition, the travel order was amended to increase the total cost of the relocation move due to an increase in the estimated cost of shipping a POV.

In decision David J. Dossett, B-217691, July 31, 1985; also involving a transfer between Alaska and the continental United States, we said at 3:

"Although the use of a second POV as an authorized mode of personal transportation effectively resulted in the transportation of that vehicle as though it was an otherwise properly transportable item * * * [s]o long as its use for personal travel purposes is approved in lieu of other modes of travel and transportation, and so used, reimbursement for a second POV is authorized on a mileage basis at the rates prescribed in FTR, para. 2-2.3b."

See also Gary E. Pike, above.

It is our view that under these travel orders Mrs. Hammond was entitled to ship a POV and use another POV as her personal mode of transportation. Therefore, she may be reimbursed the cost of having a private contractor transport her first POV to Fairbanks, not to exceed the estimated shipping cost of \$1,416 specified in the travel orders.

Temporary Quarters Subsistence Expense

According to the itemized expense record prepared by Mrs. Hammond to accompany her initial travel voucher, her TQSE claim for 60 days totaled \$10,208.05. Of that amount, \$3,626.80 represented the cost incurred for her and her family's lodging and \$6,581.25 represented the cost of subsistence and miscellaneous expenses. The agency's audit of the voucher determined that the lodgings portion of the cost was reasonable, and no adjustment was required. However, a significant adjustment was made for

the subsistence and miscellaneous expense portion claimed. We do not agree that the basis for reduced entitlement is supported by governing law and regulation.

The submission states that the maximum calculated per diem authorized Mrs. Hammond and her immediate family for TQSE purposes in the Fairbanks, Alaska area was \$216.66 a day, subject to reduction with passage of time, on an incremental basis. FTR, para. 2-5.4. The submission goes on to state that the policy and practice of the agency is that "reimbursement for meals and miscellaneous expenses ordinarily should not exceed 49 percent of the maximum per diem for the locality." Even though the 49 percent factor was recognized as a guideline, the submission goes on to state that the agency computed the maximum daily amount payable for meals and miscellaneous expenses based strictly on the 49 percent factor, thus permitting reimbursement in the amount of \$106.16 a day for the first 30 days, and for the second 30 days, \$79.62 a day.

We inquired as to the basis upon which the agency established that 51 percent of the maximum per diem must be reserved for lodging costs, and only 49 percent is available for meals and miscellaneous expenses. We were informed that the Regional Supplement to chapter 5-30 of the Department of Health and Human Services Travel Manual, relating to reasonableness of meals and miscellaneous claims while on actual and necessary subsistence travel, provides, in part, in section X5-30-20:

"A. * * * that the daily cost of meals and miscellaneous expenses will be considered reasonable if they do not exceed 45% of the proscribed daily maximum. Claims in which the cost for meals and miscellaneous exceeds 45% may be allowed providing that the necessity for the additional cost is adequately justified. In no case, however, shall meals and miscellaneous costs in excess of 49% be allowed."

It is also stated in that supplement that such policy is based on a decision by this Office, without specification, which ruled that the lodging portion of a daily subsistence rate must constitute the majority of the expense.

We are not aware of any decision by this Office in which we ruled that the lodging portion of a travel expense claim, or a temporary quarters subsistence expense claim, must constitute the majority of the expense claimed, or that the cost of the actual subsistence and miscellaneous expense portion of such a claim may never exceed 49 percent, or any other specific percentage.

Under 5 U.S.C. § 5724a(a)(3), as amended, and implementing regulations contained in Chapter 2, Part 5 of the FTR's, as amended in part by GSA Bulletin FPMR A-40 (Supp. 10, Nov. 14, 1983), a transferred employee may be reimbursed subsistence expenses for himself and his immediate family, generally, for a period of up to 60 days while occupying temporary quarters. These regulations authorize reimbursement only for the actual subsistence expenses incurred, provided they are incident to the occupancy of temporary quarters and are reasonable as to amount. FTR para. 2-5.4a. It is the responsibility of the employing agency, in the first instance, to review the employee's claim in terms of amount spent daily for needs (FTR para. 2-5.4b), to determine whether the subsistence expense claim is reasonable. In decision 52 Comp. Gen. 78 (1972), we held that such evaluation of reasonableness must be made on the basis of the facts in each case. In Jesse A. Burks, 55 Comp. Gen. 1107 (1976), affirmed and amplified on reconsideration, 56 Comp. Gen. 604 (1977), we held that where the agency has exercised that responsibility, this Office generally will not substitute its judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious.

In decision Harvey P. Wiley, B-218988, March 12, 1986, 65 Comp. Gen. _____, citing to decision Harry G. Bayne, 61 Comp. Gen. 13 (1981), we approved as a reasonable exercise of agency discretion the establishment of a guideline alerting employees that a certain percentage (in that case 45 percent) of the statutory maximum rate of per diem for TQSE, meals and miscellaneous expenses may be considered as reasonable. We went on to state, however, that such a guideline could not operate as an absolute bar to payment of additional amounts in any case where the employee could justify the expenditure on the basis of unusual circumstances, with the burden of proof

being on the employee to establish that the meals and miscellaneous expenses incurred in excess of the stated percentage were reasonable.

In the present case, the agency guideline of 49 percent was applied to Mrs. Hammond's claim as an absolute bar, without consideration of the possibility that any of the claimed expenses in excess of that amount may have been reasonable. Nor was she given the opportunity to supply evidence which might demonstrate that any part of the subsistence expenses claimed, which were in excess of 49 percent, were reasonable. In view of the fact that an initial high maximum per diem rate of \$216.66 was established for the Fairbanks, Alaska, locality for the employee, her spouse, and her dependent, it is not unrealistic to suppose that over a long period (60 days), subsistence expenses in excess of 50 percent of maximum per diem might prove to be reasonable.

As indicated above, an agency regulation that absolutely limits certain types of otherwise reimbursable expenses, such as meals and miscellaneous, to a percentage of the approved per diem rate is arbitrary and not consistent with the FTR's and the decisions of this Office. Therefore, the agency's policy should be revised to reflect the fact that while payment will normally be limited to 49 percent of the statutory maximum amounts in excess of that figure may be paid if adequate justification based on unusual circumstances is submitted by the employee.

Accordingly, Mrs. Hammond is entitled to present evidence for agency consideration that the subsistence expenses incurred which were in excess of 49 percent of the maximum locality per diem for Fairbanks, Alaska, are reasonable because of unusual circumstances. If such evidence is presented and accepted by the agency, the claim may be paid to the extent authorized by FTR para. 2-5.4, as amended.

for Milton J. Hoover
Comptroller General
of the United States